

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 09F- BD080-SBD

3 **PRECISION TITLE AGENCY, INC. AND**
4 **DOUGLAS R. SMITH, PRESIDENT**
4425 West Olive Avenue, #188
Glendale, Arizona 85302

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

5 Respondents.
6

7 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
8 makes the following Findings of Fact and Conclusions of Law and enters the following Order
9 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

10 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
11 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
12 hearing to contest this Order. The Request for Hearing shall be filed with the Arizona Department of
13 Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D) within **thirty (30) days** of
14 service of this Order and shall identify with specificity the action or order for which review is sought
15 in accordance with A.R.S. § 41-1092.03(B).

16 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
17 her own behalf or by counsel. If Respondents are represented by counsel, the information required
18 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
19 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
20 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
21 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
22 **physical accessibility.** Requests for special accommodations must be made as early as possible to
23 allow time to arrange the accommodations. If accommodations are required, call the Office of
24 Administrative Hearings at (602) 542-9826.

25 ..

26 ...

1 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.
2 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled
3 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
4 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
5 Department will be present (the "Department Representative"). Please note that in requesting an
6 Informal Settlement Conference, Respondents waive any right to object to the participation of the
7 Department Representative in the final administrative decision of this matter, if it is not settled. In
8 addition, any written or oral statement made by Respondents at such informal settlement conference,
9 including written documentation created or expressed solely for purposes of settlement negotiations,
10 are inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
11 regarding informal settlement conferences.) Conversely, any written or oral statement made by
12 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
13 Department in any subsequent hearing.

14 If Respondents do not request a hearing, this Order shall become final. If Respondents
15 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
16 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
17 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
18 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
19 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
20 132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-817; and (4) an
21 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
22 escrow agents pursuant to A.R.S. §§ 6-123 and 6-131.

23 FINDINGS OF FACT

24 1. Respondent Precision Title Agency, Inc. ("Precision") is an Arizona corporation authorized
25 to transact business in Arizona as an escrow agent, license number EA-0908919, within the meaning
26 of A.R.S. §§ 6-801, *et seq.* The nature of Precision's business is that of an escrow agent within the

1 meaning of A.R.S. § 6-801(5).

2 2. Respondent Douglas R. Smith ("Mr. Smith") is the President of Precision, and, as such, is
3 authorized to transact business in Arizona as an escrow agent, within the meaning of A.R.S. §§ 6-
4 801, *et seq.*

5 3. On September 8, 2008, the Department conducted an examination of Precision's business
6 affairs. As a result of the examination, a report was prepared ("Report of Examination") which
7 revealed that Precision and Mr. Smith:

8 a. Engaged in unlicensed activity by engaging in the escrow business or acting in the
9 capacity of an escrow agent without first obtaining a license from the Department,
10 specifically:

11 i. Respondents' license was approved by the Department on July 17, 2007 and
12 issued on July 25, 2007. There are a total of twenty five (25) escrow
13 transactions listed on Precision's Closing Report with opening/closing dates
14 prior to a license being issued by the Department. The unlicensed activity
15 included requesting and receipt of payoff statements, receipt and preparation
16 of loan documents, receipt of earnest money and receipt and disbursement of
17 loan proceeds and closing funds; and

18 ii. Of the twenty five (25) escrows opened prior to being licensed by the
19 Department, nineteen (19) files were cancelled. The remaining six (6) files
20 were closed and the following fees were collected:

21 1. The Buyer in escrow file #00101996-001 was charged an escrow fee
22 of \$200.00, a reconveyance fee of \$150.00, a courier fee of \$40.00,
23 and a recording fee of \$68.00, for a total charge of \$458.00;

24 2. The Buyer in escrow file #00102068-001 was charged an escrow fee
25 of \$200.00, a courier fee of \$40.00, an outgoing wire fee of \$20.00, a
26 reconveyance fee of \$75.00, and a recording fee of \$50.00, for a total

1 charge of \$385.00;

2 3. The Buyer in escrow file #00102069-001 was charged an escrow fee
3 of \$200.00, a courier fee of \$60.00, an outgoing wire fee of \$20.00; a
4 reconveyance fee of \$75.00, and a recording fee of \$50.00, for a total
5 charge of \$405.00;

6 4. The Buyer in escrow file #00102071-001 was charged an escrow fee
7 of \$200.00, a reconveyance fee of \$75.00, a courier fee of \$40.00, a
8 special services-debt payments fee of \$75.00, and a recording fee of
9 \$50.00, for a total charge of \$440.00;

10 5. The Buyer in escrow file #00102073-001 was charged an escrow fee
11 of \$200.00, a courier fee of \$40.00, a reconveyance fee of \$175.00, a
12 wire fee of \$60.00, and a recording fee of \$50.00, for a total charge of
13 \$525.00; and

14 6. The Buyer in escrow file #00102074-001 was charged an escrow fee
15 of \$200.00, a courier fee of \$40.00, an outgoing wire fee of \$20.00, a
16 reconveyance fee of \$75.00, a check charge of \$75.00 and a recording
17 fee of \$50.00, for a total charge of \$460.00;

18 b. Failed to adequately follow up on escrow account balances aged in excess of one
19 hundred eighty (180) days, specifically:

20 i. The Department's Examiner found one (1) outstanding escrow account
21 balance totaling one hundred dollars (\$100.00) as of July 31, 2008;

22 c. Failed to maintain certain internal control procedures to ensure that persons employed
23 by or associated with Respondents' business do not make significant errors or
24 perpetuate significant irregularities or fraud without timely detection, specifically:

25 i. The reconcilements were signed and dated by the preparer and reviewer;
26 however, the examiners were unable to determine who was the preparer and

- 1 who was the reviewer; and
- 2 ii. One of the parties was a signer on the escrow account;
- 3 d. Failed to provide adequate back-up documentation on fiduciary account
- 4 reconcilements, specifically:
- 5 i. Respondents failed to include adequate documentation to support an adjusting
- 6 item shown on the reconcilement. Specifically, thirty three dollars and twenty
- 7 nine cents (\$33.29), dated June 4, 2008, listed as a "deposit in transit" on the
- 8 July 31, 2008 reconciliation;
- 9 e. Failed, within three (3) business days after receipt of deposited escrow monies, to
- 10 provide and document to parties in at least seven (7) escrow files, a complete and
- 11 accurate notice of their right to earn interest on all monies deposited into the escrow;
- 12 f. Accepted escrows in which a participant in the escrow is an affiliate of Precision, and
- 13 failed to disclose Precision's affiliate relationship to all nonaffiliated escrow
- 14 participants in writing, specifically:
- 15 i. Precision Mortgage, Inc. and Precision Real Estate Inc. are affiliates with
- 16 Respondents and this affiliation was not disclosed in at least thirty four (34)
- 17 escrow files;
- 18 g. Failed to provide escrow parties with a complete and accurate disclosure of the
- 19 availability of a closing protection letter from the underwriter that provides protection
- 20 for loss of escrow monies due to fraud or dishonesty of the escrow agent, specifically:
- 21 i. Respondents' escrow files failed to document the disclosure of the availability
- 22 of closing protection letters from the underwriters, or copies of closing
- 23 protection letters provided to all escrow parties as required by law, for at least
- 24 six (6) escrow files;
- 25 h. Failed to provide the escrow depositors in at least seven (7) escrow files a complete
- 26 and accurate disclosure that monies deposited into an escrow account are not insured

1 by this State or the United States Government against loss from fraud or theft;

2 i. Prematurely disbursed funds that were not available for withdrawal from the escrow
3 account, specifically:

4 i. On September 24, 2007, Precision received a check in the amount of six
5 thousand, three hundred sixty seven dollars and twenty five cents (\$6,367.25)
6 for escrow file #102081 and disbursed the entirety of the funds on that same
7 date;

8 ii. On October 19, 2007, Precision received a check in the amount of thirty seven
9 thousand, nine hundred thirty seven dollars and three cents (\$37,937.03) for
10 escrow file #102152 and disbursed the entirety of the funds on that same date;
11 and

12 iii. On May 2, 2008, Precision received a check in the amount of twelve
13 thousand, two hundred nineteen dollars and forty seven cents (\$12,219.47) for
14 escrow file #102319 and disbursed the entirety of the funds on that same date;

15 j. Charged escrow parties unfiled escrow fees that have not been filed with or approved
16 by the Superintendent, specifically:

17 i. A document preparation fee at an unfiled rate of one hundred fifty dollars
18 (\$150.00) was charged to the borrower in escrow #102133;

19 ii. An inspection fee at an unfiled rate of fifty five dollars (\$55.00) was charged
20 to the seller in escrow #102182;

21 iii. A check fee at an unfiled rate of seventy five dollars (\$75.00) was charged to
22 the borrower in escrow #102224;

23 iv. A special services fee at an unfiled rate of one hundred ten dollars (\$110.00)
24 was charged to the borrower in escrow #102264;

25 v. A document preparation fee at an unfiled rate of one hundred fifty dollars
26 (\$150.00) was charged to the seller in escrow #102303; and

- 1 vi. A document preparation fee at an unfiled rate of twenty five dollars (\$25.00)
2 was charged to the seller in escrow #102336;
- 3 k. Deviated from their filed and approved escrow rates at least thirty one (31) times,
4 amounting to a total deviation of one thousand, four hundred thirty dollars
5 (\$1,430.00), specifically:
- 6 i. Respondents overcharged escrow parties at least sixteen (16) times,
7 amounting to a deviation of five hundred forty five dollars (\$545.00); and
8 ii. Respondents undercharged escrow parties at least fifteen (15) times,
9 amounting to a deviation of eight hundred eighty five dollars (\$885.00);
- 10 l. Failed to document the escrow recording date in at least one (1) escrow file; and
11 m. Failed to maintain detailed escrow fee calculation worksheets in sufficient detail to
12 document each escrow officer's calculation of escrow fees in at least seven (7)
13 escrow files.

14 **CONCLUSIONS OF LAW**

15 1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty to
16 regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules,
17 and regulations relating to escrow agents.

18 2. By the conduct set forth above in the Findings of Fact, Precision and Mr. Smith
19 violated the following:

- 20 a. A.R.S. § 6-813, by engaging in unlicensed activity by engaging in the escrow
21 business or acting in the capacity of an escrow agent without first obtaining a license
22 from the Department;
- 23 b. A.R.S. §§ 6-834(A) and 6-841(B), by failing to adequately follow up on escrow
24 account balances aged in excess of one hundred eighty (180) days;
- 25 c. A.R.S. §§ 6-834(A) and 6-841(B), by failing to maintain certain internal control
26 procedures to ensure that persons employed by or associated with Respondents'

1 business do not make significant errors or perpetuate significant irregularities or fraud
2 without timely detection;

3 d. A.R.S. §§ 6-834(A) and 6-841(B), by failing to provide adequate back-up
4 documentation on fiduciary account reconcilements;

5 e. A.R.S. § 6-834(D) and A.A.C. R20-4-702, by failing, within three (3) business days
6 after receipt of deposited escrow monies, to provide and document to parties in at
7 least seven (7) escrow files, a complete and accurate notice of their right to earn
8 interest on all monies deposited into the escrow;

9 f. A.R.S. § 6-840(A), by accepting escrows in which a participant in the escrow is an
10 affiliate of Precision, and failing to disclose Precision's affiliate relationship to all
11 nonaffiliated escrow participants in writing;

12 g. A.R.S. § 6-841.02(A), by failing to provide escrow parties with a complete and
13 accurate disclosure of the availability of a closing protection letter from the
14 underwriter that provides protection for loss of escrow monies due to fraud or
15 dishonesty of the escrow agent;

16 h. A.R.S. § 6-841.03, by failing to provide the escrow depositors in at least seven (7)
17 escrow files a complete and accurate disclosure that monies deposited into an escrow
18 account are not insured by this State or the United States Government against loss
19 from fraud or theft;

20 i. A.R.S. §§ 6-843(A) and (B), by prematurely disbursing funds that were not available
21 for withdrawal from the escrow account;

22 j. A.R.S. § 6-841.01(A), by charging escrow parties unfilled escrow fees that have not
23 been filed with or approved by the Superintendent;

24 k. A.R.S. § 6-846.04(A), by deviating from their filed and approved escrow rates at least
25 thirty one (31) times, amounting to a total deviation of one thousand, four hundred
26 thirty dollars (\$1,430.00);

- 1 e. Shall within three (3) business days after receipt of deposited escrow monies provide
2 and document to escrow parties a complete and adequate notice of their right to earn
3 interest on all monies deposited into the escrow;
- 4 f. Shall not accept escrows in which a participant in the escrow is an affiliate of
5 Respondents without disclosing the affiliate relationship to all nonaffiliated escrow
6 participants in writing;
- 7 g. Shall provide escrow parties with a complete and accurate disclosure of the
8 availability of a closing protection letter from the underwriter that provides protection
9 for loss of escrow monies due to fraud or dishonesty of the escrow agent;
- 10 h. Shall provide escrow depositors with a complete and accurate disclosure that monies
11 deposited into an escrow account are not insured by this State or the United States
12 Government against loss from fraud or theft;
- 13 i. Shall not prematurely disburse funds that are not available for withdrawal from the
14 escrow account;
- 15 j. Shall not charge escrow parties unfilled escrow fees that have not been filed with or
16 approved by the Superintendent;
- 17 k. Shall not deviate from their filed and approved escrow rates;
- 18 l. Shall document the escrow recording date in all escrow files; and
- 19 m. Shall maintain detailed escrow fee calculation worksheets in sufficient detail to
20 document each escrow officer's calculation of escrow fees.
- 21 2. Precision and Mr. Smith shall immediately pay to the Department a civil money
22 penalty in the amount of **five thousand dollars (\$5,000.00)**. Precision and Mr. Smith are jointly and
23 severally liable for payment of the civil money penalty.
- 24 3. Precision and Mr. Smith shall immediately pay to the Department the examination fee
25 in the amount of **four thousand, four hundred eighty five dollars (\$4,485.00)**.
- 26 4. Precision and Mr. Smith shall immediately reimburse all unfilled escrow fees and the

1 overcharges in escrow rates to the escrow parties in the transactions set forth in Findings of Fact
2 paragraphs 3(j) and 3(k)(i). Respondents shall provide to the Department, as proof of said
3 reimbursements, a copy of the check for each reimbursement made.

4 5. Pursuant to A.R.S. § 6-846.04(B), Precision and Mr. Smith must remit a penalty to
5 the Superintendent in an amount equal to the total deviations, which is **one thousand, four hundred**
6 **thirty dollars (\$1,430.00).**


7 6. Precision and Mr. Smith shall immediately reimburse all fees charged while
8 Respondents were unlicensed, as set forth in Findings of Fact paragraph 3(a)(ii). Respondents shall
9 provide to the Department, as proof of said reimbursements, a copy of the check for each
10 reimbursement made.

11 7. The provisions of this Order shall be binding upon Respondents, their employees,
12 agents, and other persons participating in the conduct of the affairs of Respondents.

13 8. This Order shall become effective upon service, and shall remain effective and
14 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
15 or set aside.

16 SO ORDERED this 23 day of April, 2009.

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions

19 By 
20 Robert D. Charlton
21 Assistant Superintendent of Financial Institutions

22 **CONSENT TO ENTRY OF ORDER**

23 1. Respondents acknowledge that they have been served with a copy of the foregoing
24 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
25 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

26 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of
the foregoing Findings of Fact, Conclusions of Law, and Order.

1 3. Respondents state that no promise of any kind or nature has been made to induce
2 them to consent to the entry of this Order, and that they have done so voluntarily.

3 4. Respondents agree to cease from engaging in the violative conduct set forth above in
4 the Findings of Fact and Conclusions of Law.

5 5. Respondents acknowledge that the acceptance of this Agreement by the
6 Superintendent is solely to settle this matter and does not preclude this Department, any other agency
7 or officer of this state or subdivision thereof from instituting other proceedings as may be
8 appropriate now or in the future.

9 6. Douglas R. Smith, on behalf of Precision Title Agency, Inc. and himself, represents
10 that he is the President, and that, as such, has been authorized by Precision Title Agency, Inc. to
11 consent to the entry of this Order on its behalf.

12 7. Respondents waive all rights to seek judicial review or otherwise to challenge or
13 contest the validity of this Cease and Desist Order.

14 DATED this 21 day of May, 2009.

15
16 By 

Douglas R. Smith, President
Precision Title Agency, Inc.

17
18 ORIGINAL of the foregoing filed this 23rd
19 day of April, 2009, in the office of:

20 Felecia A. Rotellini
21 Superintendent of Financial Institutions
22 Arizona Department of Financial Institutions
ATTN: Susan Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

23 COPY mailed/delivered same date to:

24 Erin O. Gallagher, Assistant Attorney General
25 Office of the Attorney General
1275 West Washington
26 Phoenix, AZ 85007

1 Robert D. Charlton, Assistant Superintendent
Dianna Cox, Examiner-in-Charge
2 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
3 Phoenix, AZ 85018

4 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

5 Douglas R. Smith, President
6 Precision Title Agency, Inc.
4425 W. Olive Ave. #188
7 Glendale, AZ 85302
Respondents

8 Douglas R. Smith, Statutory Agent For:
9 Precision Title Agency, Inc.
41268 N. Sutler Lane
10 Anthem, AZ 85283

11 
420633; PHX-AGN-2008-0794

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26